

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-40100-RWZ

ADRIAN WILLIAMS

v.

DAVID L. WINN

ORDER CONCERNING REQUEST FOR CERTIFICATE OF APPEALABILITY

January 5, 2006

ZOBEL, D.J.

Petitioner, Adrian Williams, has appealed from this court's judgment dismissing his petition under 28 U.S. C. § 2241 and now seeks a certificate of appealability. He makes two points in support of his motion.

First, he asserts that he has been denied his constitutional right of access to the courts by the failure of prison officials to assist him in the preparation of the petition for a writ of habeas corpus. Indeed, under the rules at F.M.C. Devens, inmate assistants and library clerks are instructed not to assist other inmates such as petitioner.

Second, petitioner asserts that his detention is illegal in that a thirty months' segment of his sentence was imposed for an offense, "kidnapping abduction", which was not included in the charging document and that a petition under § 2241 is the only way to challenge this illegal detention.

Since the original petition brought under § 2241 concerned only petitioner's claims as to his detention, the court did not address petitioner's complaint about the

lack of legal assistance. Accordingly, this complaint raises no appealable issues.

Petitioner did allege a number of constitutional violations concerning his trial and sentence. However, the dismissal of the petition was based not on the merits of petitioner's claims but on the lack of this court's jurisdiction to hear them. Petitioner did appeal directly from the judgment and later filed two petitions under 28 U.S.C. § 2255 all of which were unsuccessful. There does not appear to be much dispute that petitioner is foreclosed from raising these same issues for a fourth time and by means of § 2241. Accordingly, the motion for a certificate of appealability is denied.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE